

1 Kent R. Robison, Esq. (Bar No. 1167)
2 Clayton P. Brust, Esq. (Bar No. 5234)
3 Jennifer L. Baker, Esq. (Bar No. 9559)
4 ROBISON, BELAUSTEGUI, SHARP & LOW
5 71 Washington Street
6 Reno, Nevada 89503
7 Telephone: (775) 329-3151
8 Facsimile: (775) 329-7941
9 Attorneys for Defendants
10 Corporation of the Presiding Bishop of The Church
11 of Jesus Christ of Latter-Day Saints and
12 Corporation of the President of The Church of Jesus
13 Christ of Latter-Day Saints and Successors

ELECTRONICALLY FILED 08/31/07

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF NEVADA

11 DA-DAZE-NOM MANZANARES,

12 Plaintiff,

13 vs.

CASE NO. 07-CV-00076-LRH-RAM

14 ELKO COUNTY SCHOOL DISTRICT, and
15 GARY LEE JONES, SR., as agent for ELKO
16 COUNTY SCHOOL DISTRICT, and GARY LEE
17 JONES, SR., individually, and CORPORATION
18 OF THE PRESIDING BISHOP OF THE
19 CHURCH OF JESUS CHRIST OF LATTER-
20 DAY SAINTS, a foreign corporation registered to
do business in the State of Nevada;
21 CORPORATION OF THE PRESIDENT OF THE
22 CHURCH OF JESUS CHRIST OF LATTER-
23 DAY SAINTS AND SUCCESSORS, a foreign
24 corporation registered to do business in the State
25 of Nevada; and Does 1-5, and XYZ Corporations
26 1-5.

27 Defendants.

28 _____ /

**MOTION FOR ORDER REQUIRING PLAINTIFF TO SUBMIT TO
INDEPENDENT MENTAL EXAMINATION
& MOTION FOR ORDER SHORTENING TIME**

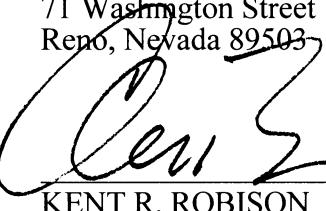
29 Defendants Corporation of the Presiding Bishop of The Church of Jesus Christ of Latter-
30 Day Saints and Corporation of the President of The Church of Jesus Christ of Latter-Day Saints
31 and Successors (collectively referred to herein as "The Church") hereby move this Court for an
32 order requiring Plaintiff Da-Daze-Nom Manzanares to submit to an independent mental

1 examination pursuant to FRCP 35. The Church has already requested Plaintiff to stipulate to
 2 such an examination, but Plaintiff has failed to respond. The Church also requests an order
 3 expediting the briefing on this motion so that the examination can be completed prior to the
 4 current date set for exchange of expert witness reports.

5 This motion is based upon the Points and Authorities set forth below, the affidavit of
 6 Clayton P. Brust, and any other materials the Court wishes to consider.

7 DATED this 31st day of August, 2007.

8
 9 ROBISON, BELAUSTEGUI, SHARP & LOW
 10 A Professional Corporation
 11 71 Washington Street
 12 Reno, Nevada 89503

13 By: 

14 KENT R. ROBISON
 15 CLAYTON P. BRUST
 16 JENNIFER L. BAKER
 17 Attorneys for Defendants
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 20 Corporation of the President of The Church of Jesus
 21 Christ of Latter-Day Saints and Successors

22 I. MEMORANDUM OF POINTS AND AUTHORITIES

23 This matter concerns an alleged sexual relationship between Defendant Gary Lee Jones
 24 and the Plaintiff, who at the time of the alleged sexual relationship was a minor. Plaintiff is
 25 claiming mental distress and emotional damages. However, Plaintiff testified during her
 26 deposition that her childhood was rife with physical and mentally abusive circumstances. (Brust
 27 aff. ¶2). Additionally, Plaintiff displayed during her deposition that she has grown into a
 28 normal, functioning adult and member of the community in which she lives, raising serious
 29 questions regarding the emotional and psychological impact of the alleged sexual relationship.
 30 As such, The Church is entitled to conduct discovery by way of an Independent Medical
 31 Examination. Rogge v. MCA Universal Studios, 165 F.R.D. 605 (C.D. Cal. 1995)(party moving

1 for physical or mental examination must show physical or mental condition is "in controversy"
2 and good cause for examination).

3 Independent Medical Examinations are common in litigation involving claims of
4 personal, physical and/or psychological injury. Although it is the experience of the undersigned
5 that such examinations are usually the result of stipulation between the parties, FRCP 35 is the
6 Rule that ensures a defendant the right to examine a plaintiff's injury claims by way of
7 independent examination. FRCP 35(a) provides:

8 When the mental or physical condition (including the blood group)
9 of a party or of a person in the custody or under the legal control
10 of a party, is in controversy, the court in which the action is
11 pending may order the party to submit to a physical or mental
12 examination by a suitable licensed or certified examiner or to
13 produce for examination the person in the party's custody or legal
14 control. The order may be made only on motion for good cause
shown and upon notice to the person to be examined and to all
parties and shall specify the time, place, manner, conditions, and
scope of the examination and the person or persons by whom it is
to be made.

15 The Church has retained the services of Dr. William Foote to perform an independent
16 psychological examination of Plaintiff to explore the impact, if any, of the alleged sexual
17 relationship she had with Defendant Gary Lee Jones. The Church has also retained Dr. Foote to
18 make determinations as to whether the alleged sexual relationship was in any way connected
19 with or related to Mr. Jones' position with The Church. This is especially important because
20 Plaintiff specifically denied any membership in The Church, interest in The Church, or Church
21 influence in her alleged sexual relationship with Gary Jones. (Brust aff. ¶4). Dr. Foote has
22 lectured and authored articles on the issue of clergy and teacher sexual relationships with
23 minors, in addition to lecturing and authoring articles on various other aspects of forensic
24 psychology. A copy of Dr. Foote's Curriculum Vitae is attached to the Affidavit of Clayton P.
25 Brust as Exhibit C. (Brust aff. ¶5).

26 The requirements set forth in FRCP 35 for the Court to order an examination of Plaintiff
27 have been met. Plaintiff herself put her psychological, emotional health at issue in this matter.
28 Further, Dr. Foote is clearly qualified to perform the examination and the parameters of the

1 examination are tailored to the issues presented in this matter. Accordingly, The Church
 2 respectfully requests that the Court order Plaintiff to submit to an examination by Dr. Foote on
 3 September 12 and 13, 2007 in Albuquerque, New Mexico at Dr. Foote's office located at 215
 4 Gold Avenue SW, Ste. 202, Albuquerque, NM..

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6 **II. REQUEST FOR ORDER SHORTENING TIME/
 EXPEDITED BRIEFING SCHEDULE**

7 The Church also requests an order expediting the briefing schedule in this matter. The
 8 Church has repeatedly requested Plaintiff to stipulate to a medical examination. (Brust aff. ¶2
 9 and 3). However, The Church has not received a response from Plaintiff since obtaining
 10 potential dates for the examination. (Brust aff. ¶3). The last day for disclosing expert opinions
 11 in this matter is September 28, 2007. Dr. Foote is available to conduct his examination of
 12 Plaintiff on September 12 and 13, 2007. Any order by the Court for Plaintiff to submit to such
 13 examination must be issued prior to those dates. As such, pursuant to LR6-1 The Church
 14 respectfully requests that the Court expedite the briefing schedule for this motion so that
 15 Plaintiff's opposition, if any, must be filed and served no later than September 7, 2007 and The
 16 Church's reply must be filed and served no later than September 8, 2007.

17 DATED this 31st day of August, 2007.

18

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused a true copy of **MOTION FOR ORDER REQUIRING PLAINTIFF TO SUBMIT TO INDEPENDENT MENTAL EXAMINATION & MOTION FOR ORDER SHORTENING TIME** to be served on all parties to this action by:

placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

personal delivery/hand delivery

 facsimile (fax)

Federal Express/UPS or other overnight delivery

Reno Carson Messenger Service

Jeffrey J. Kump, Esq.
Marvel & Kump, Ltd.
217 Idaho Street
P.O. Box 2645
Elko, NV 89803-2645
Facsimile: (775) 738-0187
Attorneys for Plaintiff

Thomas P. Beko, Esq.
Erickson, Thorpe & Swainston, Ltd.
99 West Arroyo Street
P.O. Box 3559
Reno, NV 89505
Facsimile: (775) 786-4160
Attorneys for Defendant
Elko County School District

Kelly G. Watson, Esq.
Colt B. Dodrill, Esq.
Watson Rounds
5371 Kietzke Lane
Reno, NV 89511
Facsimile: (775) 333-8171
Attorneys for Defendant Gary Lee Jones, Sr.

Dated this 31st day of August, 2007.

Employee of Robison, Belaustegui,
Sharp & Low